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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/787,255 | 02/27/2004 | Henning Osterwald | 095309.53251US | 1327 |

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EXAMINER

MOHANTY, BIBHU R

ART UNIT PAPER NUMBER

3747

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/787,255

Applicant(s)

OSTERWALD, HENNING

Examiner

Bibhu Mohanty

Art Unit

3747

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

1. Claims 1-33 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention.

In claim 1, the last 3 lines of the claim are unclear. The phrase "are to be different" is unclear since it is not apparent what valve control times are being compared to each other. Also, the phrase "whereby.....device" at the end is very unclear and indefinite. It appears that the cylinders supplying the exhaust gas recirculation device are being compared to themselves.

In claim 25, the last 4 lines of the claim are unclear. The phrase "are to be different" is unclear since it is not apparent what valve control times are being compared to each other. Also, the phrase "whereby.....device" at the end is very unclear and indefinite. It appears that the cylinders supplying the exhaust gas recirculation device are being compared to themselves.

The claims are examined to the extent understood.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russ et al. US Patent 5,934,263.

Russ has disclosed the invention substantially as claimed showing a engine in which an exhaust gas recirculation device (EGR) is used (see column 6, line 15). The distribution of the recirculated exhaust gas among the individual cylinders is different since only partial cylinders are activated at certain times (see column 6, first full ppgh). Note that the valve "overlap" times will be "none at all" for the deactivated cylinders. However, Russ does not show the device to use an exhaust gas turbocharger.

The Examiner takes Official Notice that turbochargers are known in the art to provide engines with extra power.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Russ to include a turbocharger system as known in the art to provide extra power.

With regard to claims 3-6, the deactivated cylinders will inherently receive none of the recirculated exhaust gas.

With regard to claims 7-12, the device of Russ uses six cylinders.

With regard to claims 13-24, the use of a commonly known throttle valve for the EGR valve is considered an obvious use of a known valve.

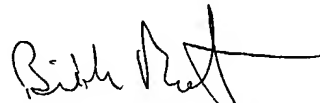
With regard to claims 25-30, the claimed method steps follow from simply using the proposed device.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bibhu Mohanty whose telephone number is 703 308-3706. The examiner can normally be reached on M-F 9-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Yuen can be reached on 703 308-1946. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bibhu Mohanty
Primary Examiner
Art Unit 3747

brm